

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. Nos.408, 409 & 410/Chny/2023
निर्धारण वर्ष/**Assessment Years: 2008-09, 2010-11 & 2011-12**

The Deputy Commissioner of
Income Tax,
Central Circle 2(2),
Investigation Building, Chennai -34.

Vs. M/s. Midas Golden Distilleries Pvt. Ltd.,
2/207, Srimathyur Village, Padapai –
Pushpagiri Road, Sri Perumbudur Taluk,
Kancheepuram – 601 301.

[PAN:AADCM9073D]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri V. Nandakumar, CIT
प्रत्यर्थी की ओर से/Respondent by : Shri T.D. Sanjay Kandiar, CA
सुनवाई की तारीख/ Date of hearing : 09.10.2023
घोषणा की तारीख /Date of Pronouncement : 20.10.2023

आदेश /ORDER

PER V. DURGA RAO, JUDICIAL MEMBER:

These three appeals filed by the Revenue are directed against the common order of the Id. Commissioner of Income Tax (Appeals) 19, Chennai, dated 31.01.2023 relevant to the assessment years 2008-09, 2010-11 and 2011-12. The Revenue has following common grounds for three assessment years:

1. *The order of the learned Commissioner of income Tax (Appeals) is erroneous on fact of the case and in law.*

2. *The Ld.CIT(A) erred in not adjudicating the merits of the case holding that the notice u/s.153A issued for this assessment year is without jurisdiction in view of the fourth proviso to Sec.153A(1) and the consequent assessment framed u/s.143(3) r.w.s.153A of the Act is void ab initio.*
- 2.1 *The Ld .CIT(A) erred in failing to appreciate that the assessee had generated cash exceeding Rs.50,00,000/- in this assessment year by overpricing of purchases of bottles and cartons purchases from M/s.Sri.Sai Enterprises and M/s.Sri Sai Cartons Unaccounted income is generated in the form of Cash, which is an asset and further as per the explanation 2 to fourth proviso to Sec,153A, definition of asset is inclusive one.*
- 2.2 *The Id.CIT(A) failed to appreciate that Shri.K.Karthikeyan, Director of the assessee company, admitted in the Sworn statement recorded on 29/12/2017, that overpricing of bottles and cartons was done in the case of purchases from Sri Sai Enterprises and Sri Sai Cartons and unaccounted cash was received by M/s.Midas Golden Distilleries Pvt Ltd. Thus the condition laid down in forth proviso to Sub section (1) of Sec.153A for initiating proceeding u/s.153A was satisfied .*
- 2.3 *The Ld.CIT(A) erred in observing that the loose sheets and sworn statements cannot be brought under the definition of "Asset" for the purpose of 4th proviso to Sec.153A(1). Here, the assessing officer has not considered the loose sheets and sworn statements as asset. Based on the information in the loose sheets seized and consequently admitted in sworn statement, it was unearthed that cash was generated by overpricing of purchase of bottles and cartons. Hence, proceeding u/s.153A cannot be held to be invalid for the relevant assessment years.*
3. *For these grounds and any other ground including amendment of grounds that may be raised during the course of the appeal proceedings, the order of learned CIT(Appeals) may be set aside and that of the Assessing Officer be restored.*

2. Brief facts of the case are that the assessee is a major manufacturer of beverages and supplier to TASMAL, the state-owned monopoly for supplying liquor in Tamil Nadu. A search and seizure operation under section 132 of the Income Tax Act, 1961 ["Act" in short] was conducted in the assessee's premises on 09.11.2017. A notice under 153A of the Act was issued by the Assessing Officer requiring the

assessee to file return of total income within 7 days. In response to the notice, the assessee filed its return of income online on 0-4.12.2019. A notice under section 142(1) of the Act was issued on 04.12.2019. Subsequently, a notice under section 143(2) of the Act was issued on 16.12.2-19. In response to the notices, the assessee had filed reply vide letter dated 20.12.2019, furnishing the details called for and also challenged validity of notice issued under section 153A of the Act. After considering the submissions of the assessee and by holding that the notice issued under section 153A of the Act is valid, the Assessing Officer has completed the assessment under section 143(3) r.w.s. 153A of the Act dated 30.12.2019 making various additions for the assessment years 2008-09, 2010-11 and 2011-12.

3. The assessee carried the matter in appeal before the Id. CIT(A) challenging the assessment proceedings initiated under section 153A of the Act. After considering the submissions of the assessee and by holding that the notice issued under section 153A of the Act is without jurisdiction and the consequent assessment so framed under section 143(3) r.w.s. 153A of the Act was void ab initio, the Id. CIT(A) has observed as under:

5.6 It can be seen from the above reason provided by the AO that the income which had escaped assessment represented in form of unaccounted cash paid for the acquisition of various assets by the appellant company. However, in the assessment order, the AO did not mention of any evidence to corroborate his claim that the unaccounted cash was paid by the appellant

for purchase of its assets or there were any unexplained Asset/Investment which had been purchased from the alleged unaccounted cash. After considering all the facts and circumstances of this case, I am of view that the claim of the AO is baseless in the absence of any tangible evidence to corroborate. Hence, the meaning of the word "Asset" as per Explanation 2 above can only be interpreted in the context of the words accompanying it and cannot be interpreted to bring within its ambit completely different meaning such as unexplained income/expenditure, etc. The aforesaid loose-sheets and sworn statement can at best be classified as a source of information to deduce the alleged suppression of income and do not have any monetary value of its own. Hence, as per the above explanation, the aforesaid loose sheets and sworn statement cannot be brought under the definition of "Asset" for the purpose of the 4th proviso to sub-section (1) of the section 153A of the Act. Therefore, I hold that assumption of jurisdiction of the initiation of assessment proceedings by invoking provisions of sub-section (1) of the section 153A of the act was not correct and bad in law. Therefore, the notice issued u/s 153A of the Act is without jurisdiction and the consequent assessment so framed u/s 143(3) r.w.s. 153A of the Act was also void ab initio.

4. Aggrieved, the Revenue is in appeal before the Tribunal and contended that the Id. CIT(A) has erred in not adjudicating the merits of the case holding that the notice under section 153A of the Act issued for the assessment year is without jurisdiction in view of the fourth proviso to section 153A(1) of the Act and the consequent assessment framed under section 143(3) r.w.s. 153A of the Act is *void ab initio* on the ground that the unaccounted income generated in the form of cash is an asset and further as per the explanation 2 to fourth proviso to section 153A of the Act, the definition of asset is inclusive one.

5. On the other hand, the Id. Counsel for the assessee has strongly supported the order passed by the Id. CIT(A) besides relying upon the

decision of Mumbai Benches of the Tribunal in the case of Viraj Profiles Limited v. DCIT in I.T.A. No. 1771/Mum/2021 dated 26.04.2023.

6. We have heard both the sides, perused the material available on record and gone through the orders of authorities below. On perusal of the assessment order, we find that the Assessing Officer has framed the assessment based on loose sheet found during the search at the premise of assessee's major supplier of bottles and cartons. The Assessing Officer issued notice under section 153A of the Act on the pretext that the income which had escaped assessment represented in the form of unaccounted cash paid for the acquisition of various assets by the assessee company. For better clarity, the relevant 4th proviso to sub-section (1) of section 153A of the Act reads as under:

“Provided also that no notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years unless –

(a) the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to fifty lakh rupees or more in the relevant assessment year or in aggregate in the relevant assessment years;

(b) the income referred to in clause (a) or part thereof has escaped assessment for such year or years; and

(c) the search under section 132 is initiated or requisition under section 132A is made on or after the 1st day of April, 2017.”

(iv) Explanation 182 to sub-section (1) of Section 153A reads as under:

“Explanation 1. – For the purposes of this sub-section, the expression “relevant assessment year” shall mean an assessment year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond six assessment years but not later than ten assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.

Explanation 2. – For the purposes of the fourth proviso, “asset” shall include immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.”

In view of the above proviso to sub-section (1) of section 153A of the Act, we are of the opinion that the loose sheet containing information regarding over-pricing or over-invoicing of purchase cost of bottles cannot be considered as an asset for the reason that the word “asset” is explained in Explanation 2(supra) which means any investment of the assessee towards land or building or both, share and securities, loan and advances, deposits in bank account. Moreover, in the assessment order, the Assessing Officer did not mention any evidence to corroborate his claim that the unaccounted cash was paid by the assessee for purchase of its assets or there were any unexplained asset/investment which had been purchased from the alleged unaccounted cash.

6.1 Similar issue was subject matter in appeal before the Mumbai Benches of the Tribunal in the case of Viraj Profiles Limited v. DCIT (supra), wherein, the Tribunal has observed and held as under:

4.3 We have heard rival contentions on this legal issue and perused the record. We have extracted the fourth proviso to sec. 153A of the Act in the preceding

paragraph. A careful perusal of the above said proviso would reveal that, in order to invoke the fourth proviso to sec.153A, it is required to be shown by the AO that

- (a) the books of account or other documents or evidence in his possession reveal that the income which has escaped assessment for the relevant assessment year is "in the form of asset"*
- (b) the quantum of income so escaped amount to fifty lakhs or more in the relevant assessment year or in aggregate in the relevant assessment years.*
- (c) the said income should have escaped assessment for such year or years.*
- (d) the search is initiated on or after 1st day of April, 2017.*
- (e) the relevant assessment year is the year preceding the year of search which falls beyond six preceding assessment years but not later than ten assessment years.*

Hence, it is required to be shown by the AO that the escaped income was "in the form of asset" and further the value or aggregate value of assets has exceeded Rs.50.00 lakhs. The corollary is that, if the escaped income is not represented "in the form of asset", the fourth proviso to sec. 153A of the Act cannot be invoked in order to reopen the assessment of a year falling beyond six assessment years preceding the year of search.

4.4 In the instant case, we notice that the AO has not shown that the alleged income escaped for assessment is represented "in the form of an asset". What is assessed in this year u/s 153A of the Act is the addition towards alleged bogus purchases and disallowance of salary/professional fee u/s 37 of the Act. It is not shown that the income, if any, generated out of these two disallowances is represented in the form of asset. Hence, we are of the view that the AO could not have invoked the fourth proviso to sec. 153A of the Act in order to reopen the assessment of AY 2011-12 and accordingly hold that the said reopening is not in accordance with the law and is liable to be quashed. Accordingly, we quash the orders passed by the tax authorities for AY 2011-12.

6.2 In view of the above facts and circumstances as well as case law relied on by the assessee in the case of *Viraj Profiles Limited v. DCIT* (supra), we are of the considered opinion that the Id. CIT(A) has rightly held that the notice issued under section 153A of the Act is without jurisdiction and quashed the assessment so framed under section 143(3) r.w.s. 153A of the Act. Once the appellate order has been confirmed in

quashing the assessment order, the issue involved on merit does not require to be adjudicated. Accordingly, the ground raised by the Revenue stands dismissed for all the assessment years under appeal.

7. In the result, all the appeals filed by the Revenue are dismissed.

Order pronounced on the 20th October, 2023 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, the 20.10.2023

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1.अपीलार्थी/Appellant, 2.प्रत्यर्थी/
Respondent, 3.आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.